IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

Crl.Rev.Pet.No. 896 of 2007()

CRMP.5748/2006 of CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM

.....

REVN. PETITIONER:

THE AUTHORISED OFFICER(CHIEF MANAGER),
STATE BANK OF TRAVANCORE, BEACH ROAD,
KOLLAM BRANCH, KOLLAM.

BY ADV. SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW
SMT.ELIZABETH ALEXANDER KURIAN

RESPONDENTS:

---

1. SMT. B.S.SHEELA,NO.33 KUDUMBASREE NAGAR,
ASRAMAM, KOLLAM.

2. SRI. S.SHAJI, NO.33 KUDUMBASREE NAGAR,
ASRAMAM, KOLLAM REPRESENTED BY HIS POWER OF
ATTORNEY HOLDER SMT. B.S.SHEELA, -DO- -DO-.

3. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.KAMMAPPU
ADV. SRI.S.SANTHOSH KUMAR FOR R1

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15/03/2007, ALONG WITH CRRP NO. 906 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

CRL.R.P.No.896 of 2007

&

CRL.R.P.No.906 of 2007

Dated this the 15th day of March, 2007

ORDER

The revision petitioner in both the matters is the Authorised Officer empowered under the Securitisation Act. The impugned order is the common order in Crl.M.P.No.4977/2006 and 5748/2006 by the Chief Judicial Magistrate Court, Kollam. Crl.M.P.No.4977/2006 was filed by the authorised officer vide Section 14(1) of the Securitisation Act seeking assistance of the Chief Judicial Magistrate for taking physical possession of the secured assets and Crl.M.P.No.5748/2006 is filed by the debtor seeking to dismiss the application filed by the Authorised Officer. The court below relying on the decision reported in Arun Kumar Arora vs. Union of India (2006 (4) KLT Short notes page 48 Case No.65) dismissed the application filed by the Authorised Officer, holding that the application filed by the Authorised Officer is premature and agreeing with the view of the decision in Arun Kumar Arora's case (op. cit) that symbolic possession should be

taken at first, so that an opportunity would be available to the borrower to redress his grievance before the Debt Recovery Tribunal as provided under Section 17 of the Act.

2. Counsel for the revision petitioner has submitted that the decision relied on by the court below cannot be treated as good law in view of the decisions of the Supreme Court in the matter, especially in, Transcore vs. Union of India in Civil Appeal Nos.908, 1374, 2841, 3225, 3226 and 3228/06 dated 29.11.2006. It is submitted that Sub Section 14(1) is only on enabling provision and that the resort to Section 17 arises only after actual physical possession is taken by resorting to Section 13(4) of the Securitisation Act. The counsel has also relied on the decision of the Supreme court in Mardia Chemicals vs. Union of India (2004 (2) KLT 273 (SC)) wherein the court has discussed elaborately the provisions of the Securitisation Act. The counsel for the respondent on the other hand, has relied on the decision reported in Aboobacker vs. Punjab National Bank (2005 (1) KLT 947) wherein this court has observed that Section 14 is enacted to ensure that the financial institution does not forcibly dispossess the person in question. It is the contention of the

counsel for the respondent that before resorting to Section 14, notice contemplated under Rule 8(1) of the Security Interest (Enforcement) Rules 2002 should be issued. The counsel has submitted that he is not relying on the decision in Arun Kumar Arora's case (op. cit) that symbolic possession should be taken before Section 14 is resorted to.

3. In the instant case, it is seen that notice under Section 13(2) of the Act has been issued to the counter petitioners calling upon them to discharge the debt amounting to Rs.5,01,978/- within 60 days from the date of notice. The only point is to be considered is whether subsequent to Section 13(2) notice another notice under Rule 8(1) of the Rules should be issued before resorting to Section 14. I find that the above aspect has been considered by the Supreme Court in Transcore's case (op. cit) in detail and has affirmed that the act of taking symbolic possession is not at all contemplated by the provisions of the Securitisation Act. The Act contemplates a symbolic possession was one of the contentions raised in the above case and the same was specifically turned down by the Supreme court. It is made clear that Section 14 is only an enabling

provision. It is clarified that under Rule 8 of the Rules, Authorised Officer is empowered to take possession by delivering the possession notice prepared as nearly as possible in appendix IV (ii) of the rules. The above notice was required to be affixed on the property. Appendix IV prescribes the form of possession notice. It interalia states that notice is given to the borrower who has failed to repay the amount informing him and the public that the bank/financial institution has taken possession of the property under Section 13(4) read with Rule 9 of the Rules. The resort to appeal under Section 17 arises only thereafter. In Mardia Chemical's case (op. cit) also the Supreme court has specified that in view of Section 13(1) of the Act the creditor is empowered to enforce possession of the secured asset without the intervention of the court. In the circumstances, I find that the contention of the counsel for the respondent that Section 14 can be resorted to only after a notice is issued under Rule 8(1) of the Rules cannot be approved. The decision of the court below relying on the decision in Arun Kumar Arora's case (op. cit) cannot be upheld in view of the Supreme Court decision in Transcore's case. I find that the decision in Aboobacker's case

(op. cit) is in a different context and the ratio therein has no relevant in the present matter. The court below is bound to provide assistance to the Authorised Officer as contemplated under Section 14 of the Act. Hence, the dismissal of Crl.M.P.No.4977/2006 as well as the order allowing Crl.M.P.5748/2006 is set aside. The matter is remitted back to the court below to reconsider Crl.M.P.No. 4977/2006.

4. It is submitted by the counsel for the respondent that arrangements are made for making substantial payments and to settle the matter. In the circumstances, the revision petitioner is directed to grant one month's time to settle the dues and only then the Authorised Officer is to proceed under Section 14. The parties may appear before the Chief Judicial Magistrate Court, Kollam on 16.4.2007.

The criminal revision petitions are disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl